

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

LAWRENCE A. TAYLOR,

:

Plaintiff

:

v.

:

**CIVIL ACTION NO. 3:16-2030
(JUDGE MANNION)**

DAVID EBBERT, et al.,

:

**FILED
SCRANTON**

Defendants

:

APR 25 2018

MEMORANDUM

PER  **DEPUTY CLERK**

I. Background

Plaintiff, an inmate confined in the United States Penitentiary, Lewisburg ("USP-Lewisburg"), Pennsylvania, filed this civil rights action pursuant to 28 U.S.C. §1331. (Doc. 1). The complaint alleges three separate incidents that occurred at USP-Lewisburg, and names sixteen (16) defendants along with "10-20 Unnamed Corrections Officers and Staff." Id.

On December 29, 2017, Defendants filed a motion for summary judgment on the issue of exhaustion. (Doc. 28). On February 2, 2018, this Court issued an Order, affording Plaintiff the opportunity to file an opposition brief by March 1, 2018. (Doc. 34). On April 16, 2018, in accordance with the recent decision issued by the United States Court of Appeals for the Third Circuit, in Paladino v. Newsome, 885 F.3d 203 (3d Cir. Mar. 16, 2018), the Court provided

the parties notice that it would consider the exhaustion issue and afforded the parties time to file any supplemental materials and documents. (Doc. 35). In response to this Court's April 16, 2018 Order, Plaintiff filed a letter, requesting that he "no longer wish[es] to pursue this legal action and ask that this suite be dismissed as soon as possible and wish that all Defendants be notified as soon as possible as well." (Doc. 36).

For the reasons set forth below, the Court will grant the Plaintiff's motions to dismiss the above captioned action. However, such dismissal will be pursuant to Fed.R.Civ.P. 41(a)(2).

II. Discussion

The pertinent portions of Fed.R.Civ.P. 41(a) are as follows:

(1) By Plaintiff; by Stipulation. Subject to the provisions of Rule 23(e), of Rule 66, and any statute of the United States, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

(2) By Order of Court. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed, at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper.... Unless otherwise specified in the order, a dismissal under this

paragraph is without prejudice.

Fed.R.Civ.P. 41(a)(1),(2). Procedurally, Fed.R.Civ.P. 41(a)(1) is not available to Plaintiff because there has been a motion for summary judgment filed. Consequently, Plaintiff's request for voluntary dismissal must be pursuant to Fed.R.Civ.P. 41(a)(2) and requires an order of court.

The Court will grant Plaintiff's motion and the case will be dismissed without prejudice. A separate Order will be issued.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Dated: April 25, 2018

O:\Mannion\shared\MEMORANDA - DJ\CIVIL MEMORANDA\2016 MEMORANDA\16-2030-02.wpd